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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	
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		10/572,605	
		Filed	
		June 5, 2007	
First Named Inventor		Art Unit	
Karl-Helinz KOHLER		3764	
Examiner		J.W. DONNELLY	
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/86)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>48,641</u></p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> <p><input type="checkbox"/> *Total of _____ forms are submitted.</p>			

[Signature]
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November 10, 2010

Date

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Attorney Docket No.: 101215-221
Confirmation No.: 7048

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. SERIAL NO. : 10/572,605
APPLICANT : Karl-Heinz KOHLER
FILED : June 15, 2007
TITLE : ROPE GAME DEVICE
ART UNIT : 3764
EXAMINER : Jerome W. DONNELLY

November 10, 2010

PER TELEFAX: 571 273-8300

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PRE-APPEAL BRIEF REQUEST FOR REVIEW

SIR:

Applicant respectfully requests pre-appeal brief review of the June 15, 2010 Final Rejection (hereinafter "paper number 3") and the October 14, 2010 Advisory Action (hereinafter "paper number 5"). A Notice of Appeal is submitted along with this paper.

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Applicants respectfully submit that the Examiner has committed the following errors:

1. **The Examiner erred, in fact, by failing to provide any articulated reasoning with a rational underpinning to support the rejections of the claims under 35 U.S.C. §103(a) as allegedly being unpatentable over Kohler in view of Rudy.**

As set forth on page 3 of the July 20, 2010 Office Action (hereinafter "paper number 1"), the Examiner acknowledges that Kohler does not disclose a frame member having an icosahedron shape (please note that throughout paper number 1, the Examiner erroneously refers to a "koshedron" shape). The Examiner goes on to allege Rudy teaches a play ground climber in a shape of an icosahedron and states, without any supporting evidence of record, that "given the above teachings, the examiner notes that it would have been obvious to one of ordinary skill in the art to manufacture a playground structure of an icosahedron as one of several design shapes available in the art of designing playground structures" (see paper number 1, on pages 2 and 3).

As discussed at page 9 of October 29, 2009 Amendment (hereinafter "paper number 2"), Rudy fails to remedy the deficiencies of Kohler acknowledged by the Patent Office because Rudy, at best, teaches a dodecahedron which is not an icosahedron as specifically defined in the present claims. Neither Kohler nor Rudy teach or suggest or even mention use of an icosahedron in a game device. The Examiner fails to present any evidence of record supporting why a skilled artisan armed with the teachings of Kohler and Rudy would have been motivated to use an icosahedron in a game device. Even if a skilled artisan would have modified Kohler with Rudy, the resulting combination would have failed to achieve the presently claimed rope game device because both Kohler and Rudy are completely silent to use of an icosahedron (see paper number 2 on page 9).

Kohler and Rudy, taken singly or in combination, fail to teach or suggest a rope game device having an outer frame that has an icosahedron shape, wherein edges and corners of the icosahedron shape are formed as frame elements having a shape of an equilateral triangle as required by claim 1. Moreover, neither Kohler nor Rudy, taken singly or in combination, teach or suggest one or more hollow ball modules that are arranged and retained in a tensionable manner, that are arranged within one another and that have the spatial form of a truncated icosahedron as required by claim 1. The

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Examiner erred, in fact, by failing to present any evidence of record as to why a skilled artisan would have arrived at the presently claimed hollow ball modules in view of the teachings of Kohler and Rudy.

The Examiner's lack of factual/evidentiary basis or articulated reasoning in support of the obviousness rejection is presumptively improper and in error, and the Applicant respectfully requests that the Panel overturn the Final Rejection on this ground.

2. The Examiner erred, in fact, by not properly considering the evidence and arguments set forth by the Applicant as to why a skilled artisan would not have been motivated to used icosahedrons for rope game devices.

The Examiner considers the claims of icosahedrons and triangles as obvious arbitrary shapes, absent the applicants claimed criticality of said claimed shape (see paper number 3 at page 3). The Examiner alleges (i) the claimed shape of icosahedron is obvious given that play structures are made in "various shapes" (ii) because a shape such as Applicant claims is not specifically disclosed does not mean that the shape is not obvious (see paper number 5 at page 1).

As discussed on page 3 of the September 15, 2010 Request for Reconsideration After Final Rejection (hereinafter "paper number 4", it is known to a skilled artisan that dodecahedrons, as taught in Rudy, are used to build game devices. Additional published evidence, such as, for example, US Patent Nos. 3,970,301, 4,097,043 and 7,052,437 and WO 02/074392, DE 23 16, 141, DE 199 14 192, illustrates that dodechedrons have been used by skilled artisans for over 35 years to build game devices. Rudy discloses to the skilled artisan that dodecahedrons are known in the art to be usable for building game devices because dodecahedrons may be extendable and connectable in a more compact fashion than icosahedrons. Additionally, Rudy's dodecahedrons are stackable, in a way not achievable with icosahedrons, to built a single larger dodecahedron as shown in Fig. 18 of Kohler. The Examiner has not cited, and Applicant is not aware of any similar examples of icosahedron being used in playing devices. In view of Rudy and the above-identified additional published evidence, Applicant submits that icosahedrons are not part of the common knowledge known to a skilled artisan for building game devices.

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3. The Examiner erred, in fact, by not properly considering the advantages set forth by Applicant as to why a skilled artisan would have been motivated to use dodecahedrons, instead of icosahedrons, as rope game devices.

As discussed in paper number 4 at pages 3 and 4, there are many reasons why the skilled person would have chosen dodecahedrons, and would not have considered icosahedrons to build game devices. One advantage of dodecahedrons is that due to the smaller number of faces, the faces of dodecahedrons are bigger than faces of icosahedron. That is, if a dodecahedron is quite small, then there is still sufficiently enough space on area for children to climb. Additionally, a face usable for installation of a dodecahedron is quite big; therefore, there is less effort needed for fixation of a dodecahedron onto the ground when compared to the effort needed for fixation of a icosahedron. Further, due to the high number of corners for the dodecahedron there is a high number of ropes or rods extending radial from corner points when compared to corner points of a icosahedron. In other words, a dodecahedron has more ropes or rods extending radially that may be used for climbing when compared to an icosahedron. Moreover, a dodecahedron has faces in shape of a pentagon, whereas an icosahedron has faces in a shape of a triangle. As a result, the face of the dodecahedron provides more ropes or rods extending in similar angles which make climbing more easy and safe for a child.

For the foregoing reasons, the skilled person would have been drawn to the use of dodecahedrons, and would have been discouraged from using icosahedrons.

4. The Examiner erred, in fact, by not properly considering the hidden advantages of icosahedrons discovered by Applicant in the presently claimed rope game device.

As discussed in paper 4 at pages 4 and 5, Applicant has recognized the hidden advantages in employing icosahedron for building game devices despite the apparent negative characteristics. By doing so, surprising, unexpected and unforeseeable results and advantages were discovered by the Applicant by employing icosahedrons instead of known dodecahedrons for building game devices. These advantages illustrate a criticality of using icosahedrons for building game devices that would not have been foreseen by the skilled artisan based on the common knowledge associated with rope game devices.

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For example, an icosahedron has a greater number of faces (i.e., 20 faces) than the number of faces of a dodecahedron (i.e., 12 faces). As a result, an icosahedron provides more available space on an outside of the game device for children to climb. Also, there are more faces where two dimensional inserts according to present claim 16 may be fixed. For example, when a dodecahedron is arranged on one of its faces, there are merely 11 exposed faces available for the climbing children. In contrast, when an icosahedron is fixed to the ground with one of its faces, 19 exposed faces are available for the climbing children. Another advantage is that an icosahedron has 12 corners wherein a dodecahedron has 20 corners. The effort for manufacturing and mounting an icosahedron is much less than the effort for manufacturing and mounting a dodecahedron. Additionally, a nesting of the presently claimed hollow ball modules having spatial form of a truncated icosahedron is quite easily manufactured. Further, effort for tensioning the ropes of an icosahedron is much less than the effort for tensioning the ropes of a dodecahedron due to the smaller number of corners for icosahedron. These surprising, unexpected and unforeseeable results and advantages of using icosahedrons are evidence of criticality for using icosahedrons for rope game devices.

While these characteristics may be inherent in the structure of icosahedrons, no one prior to the present application has seen past the apparent disadvantages. Applicant has acted against the common wisdom and has harnessed these hidden advantages to create a climbing device with surprising improvements in several aspects.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the final rejections and allowance of claims 1-17. Early and favorable action is earnestly solicited.

Respectfully submitted,

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